

Assembly Bill No. 1423

CHAPTER 435

An act to amend Sections 19604 and 19604.5 of the Business and Professions Code, relating to horse racing.

[Approved by Governor September 30, 2013. Filed with
Secretary of State September 30, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1423, Committee on Governmental Organization. Horse racing: advance deposit wagering and exchange wagering deductions.

Existing law authorizes advance deposit wagering to be conducted, with the approval of the California Horse Racing Board, in accordance with specified provisions of law. Existing law requires a certain percentage of the amounts distributed for advance deposit wagering for racing meetings, except for harness racing meetings, to be deducted and distributed for the establishment and administration of a defined contribution retirement plan for California-licensed jockeys who retire on or after January 1, 2009, to supplement trainer-administered pension plans for backstretch personnel, and for distribution to a welfare fund established for horsemen and backstretch personnel, as specified. Existing law also requires a certain percentage of amounts distributed on advance deposit wagers for harness racing meetings to be deducted and distributed to a welfare fund established for the benefit of horsemen and backstretch personnel, and for any amounts remaining to be utilized for the benefit of horsemen pursuant to a written agreement between the racing association that conducts the live harness race meeting and the organization representing the horsemen, as specified.

This bill would require certain amounts generated at harness race meetings that are held in trust by the California Exposition and State Fair to be distributed to the harness racing horsemen who participated in a certain racing meeting, and to the California Exposition and State Fair, in accordance with specified percentages and requirements.

Existing law authorizes exchange wagering, as defined, by an entity licensed by the board, in accordance with specified provisions of law. Existing law, until January 1, 2021, on an annual basis, requires a certain amount of exchange revenues collected by exchange wagering licensees to be distributed to provide health and welfare benefits to jockeys and their dependents.

This bill would instead repeal those provisions on January 1 following the year in which the 10th annual distribution of those funds is made.

By imposing new requirements on licensees under the Horse Racing Law, a violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 19604 of the Business and Professions Code is amended to read:

19604. The board may authorize any racing association, racing fair, betting system, or multijurisdictional wagering hub to conduct advance deposit wagering in accordance with this section. Racing associations, racing fairs, and their respective horsemen's organizations may form a partnership, joint venture, or any other affiliation in order to further the purposes of this section.

(a) As used in this section, the following definitions apply:

(1) "Advance deposit wagering" (ADW) means a form of parimutuel wagering in which a person residing within California or outside of this state establishes an account with an ADW provider, and subsequently issues wagering instructions concerning the funds in this account, thereby authorizing the ADW provider holding the account to place wagers on the account owner's behalf.

(2) "ADW provider" means a licensee, betting system, or multijurisdictional wagering hub, located within California or outside this state, that is authorized to conduct advance deposit wagering pursuant to this section.

(3) "Betting system" means a business conducted exclusively in this state that facilitates parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(4) "Breed of racing" means as follows:

(A) With respect to associations and fairs licensed by the board to conduct thoroughbred, fair, or mixed breed race meetings, "breed of racing" shall mean thoroughbred.

(B) With respect to associations licensed by the board to conduct quarter horse race meetings, "breed of racing" shall mean quarter horse.

(C) With respect to associations and fairs licensed by the board to conduct standardbred race meetings, "breed of racing" shall mean standardbred.

(5) "Contractual compensation" means the amount paid to an ADW provider from advance deposit wagers originating in this state. Contractual compensation includes, but is not limited to, hub fee payments, and may include host fee payments, if any, for out-of-state and out-of-country races. Contractual compensation is subject to the following requirements:

(A) Excluding contractual compensation for host fee payments, contractual compensation shall not exceed 6.5 percent of the amount wagered.

(B) The host fee payments included within contractual compensation shall not exceed 3.5 percent of the amount wagered. Notwithstanding this provision, the host fee payment with respect to wagers on the Kentucky Derby, Preakness Stakes, Belmont Stakes, and selected Breeders' Cup Championship races may be negotiated by the ADW provider, the racing associations accepting wagers on those races pursuant to Section 19596.2, and the horsemen's organization.

(C) In order to ensure fair and consistent market access fee distributions to associations, fairs, horsemen, and breeders, for each breed of racing, the percentage of wagers paid as contractual compensation to an ADW provider pursuant to the terms of a hub agreement with a racing association or fair when that racing association or fair is conducting live racing shall be the same as the percentage of wagers paid as contractual compensation to that ADW provider when that racing association or fair is not conducting live racing.

(6) "Horsemen's organization" means, with respect to a particular racing meeting, the organization recognized by the board as responsible for negotiating purse agreements on behalf of horsemen participating in that racing meeting.

(7) "Hub agreement" means a written agreement providing for contractual compensation paid with respect to advance deposit wagers placed by California residents on a particular breed of racing conducted outside of California. In the event a hub agreement exceeds a term of two years, then an ADW provider, one or more racing associations or fairs that together conduct no fewer than five weeks of live racing for the breed covered by the hub agreement, and the horsemen's organization responsible for negotiating purse agreements for the breed covered by the hub agreement shall be signatories to the hub agreement. A hub agreement is required for an ADW provider to receive contractual compensation for races conducted outside of California.

(8) "Hub agreement arbitration" means an arbitration proceeding pursuant to which the disputed provisions of the hub agreement pertaining to the hub or host fees from wagers on races conducted outside of California provided pursuant to paragraph (2) of subdivision (b) are determined in accordance with the provisions of this paragraph. If a hub agreement arbitration is requested, all of the following shall apply:

(A) The ADW provider shall be permitted to accept advance deposit wagers from California residents.

(B) The contractual compensation received by the ADW provider shall be the contractual compensation specified in the hub agreement that is the subject of the hub agreement arbitration.

(C) The difference between the contractual compensation specified in subparagraph (B) and the contractual compensation determined to be payable at the conclusion of the hub agreement arbitration shall be calculated and paid within 15 days following the arbitrator's decision and order. The hub agreement arbitration shall be held as promptly as possible, but in no event more than 60 days following the demand for that arbitration. The arbitrator

shall issue a decision no later than 15 days following the conclusion of the arbitration. A single arbitrator jointly selected by the ADW provider and the party requesting a hub agreement arbitration shall conduct the hub agreement arbitration. However, if the parties cannot agree on the arbitrator within seven days of issuance of the written demand for arbitration, then the arbitrator shall be selected pursuant to the Streamlined Arbitration Rules and Procedures of the Judicial Arbitration and Mediation Services, or pursuant to the applicable rules of its successor organization. In making the hub agreement arbitration determination, the arbitrator shall be required to choose between the contractual compensation of the hub agreement agreed to by the ADW provider or whatever different terms for the hub agreement were proposed by the party requesting the hub agreement arbitration. The arbitrator shall not be permitted to impose new, different, or compromised terms to the hub agreement. The arbitrator's decision shall be final and binding on the parties. If an arbitration is requested, either party may bring an action in state court to compel a party to go into arbitration or to enforce the decision of the arbitrator. The cost of the hub agreement arbitration, including the cost of the arbitrator, shall be borne in equal shares by the parties to the hub agreement and the party or parties requesting a hub agreement arbitration. The hub agreement arbitration shall be administered by the Judicial Arbitration and Mediation Services pursuant to its Streamlined Arbitration Rules and Procedures or its successor organization.

(9) "Incentive awards" means those payments provided for in Sections 19617.2, 19617.7, 19617.8, 19617.9, and 19619. The amount determined to be payable for incentive awards under this section shall be payable to the applicable official registering agency and thereafter distributed as provided in this chapter.

(10) "Licensee" means any racing association or fair licensed to conduct a live racing meet in this state, or affiliation thereof, authorized under this section.

(11) "Market access fee" means the amount of advance deposit wagering handle remaining after the payment of winning wagers, and after the payment of contractual compensation, if any, to an ADW provider. Market access fees shall be distributed in accordance with subdivision (f).

(12) "Multijurisdictional wagering hub" means a business conducted in more than one jurisdiction that facilitates parimutuel wagering on races it simulcasts and other races it offers in its wagering menu.

(13) "Racing fair" means a fair authorized by the board to conduct live racing.

(14) "Zone" means the zone of the state, as defined in Section 19530.5, except as modified by the provisions of subdivision (f) of Section 19601. For these purposes, the central and southern zones shall together be considered one zone.

(b) Wagers shall be accepted according to the procedures set forth in this subdivision.

(1) No ADW provider shall accept wagers or wagering instructions on races conducted in California from a resident of California unless all of the following conditions are met:

(A) The ADW provider is licensed by the board.

(B) A written agreement allowing those wagers exists with the racing association or fair conducting the races on which the wagers are made.

(C) The agreement referenced in subparagraph (B) shall have been approved in writing by the horsemen's organization responsible for negotiating purse agreements for the breed on which the wagers are made in accordance with the Interstate Horseracing Act (15 U.S.C. Sec. 3001 et seq.), regardless of the location of the ADW provider, whether in California or otherwise, including, without limitation, any and all requirements contained therein with respect to written consents and required written agreements of horsemen's groups to the terms and conditions of the acceptance of those wagers and any arrangements as to the exclusivity between the host racing association or fair and the ADW provider. For purposes of this subdivision, the substantive provisions of the Interstate Horseracing Act shall be taken into account without regard to whether, by its own terms, that act is applicable to advance deposit wagering on races conducted in California accepted from residents of California.

(2) No ADW provider shall accept wagers or wagering instructions on races conducted outside of California from a resident of California unless all of the following conditions are met:

(A) The ADW provider is licensed by the board.

(B) There is a hub agreement between the ADW provider and one or both of (i) one or more racing associations or fairs that together conduct no fewer than five weeks of live racing on the breed on which wagering is conducted during the calendar year during which the wager is placed, and (ii) the horsemen's organization responsible for negotiating purse agreements for the breed on which wagering is conducted.

(C) If the parties referenced in clauses (i) and (ii) of subparagraph (B) are both signatories to the hub agreement, then no party shall have the right to request a hub agreement arbitration.

(D) If only the party or parties referenced in clause (i) of subparagraph (B) is a signatory to the hub agreement, then the signatories to the hub agreement shall, within five days of execution of the hub agreement, provide a copy of the hub agreement to the horsemen's organization responsible for negotiating purse agreements for the breed on which wagering is conducted for each race conducted outside of California on which California residents may place advance deposit wagers. Before receipt of the hub agreement, the horsemen's organization shall sign a nondisclosure agreement with the ADW provider agreeing to hold confidential all terms of the hub agreement. If the horsemen's organization wants to request a hub agreement arbitration, it shall send written notice of its election to the signatories to the hub agreement within 10 days after receipt of the copy of the hub agreement, and shall provide its alternate proposal to the hub and host fees specified in the hub agreement with that written notice. If the horsemen's organization

does not provide that written notice within the 10-day period, then no party shall have the right to request a hub agreement arbitration. If the horsemen's organization does provide that written notice within the 10-day period, then the ADW provider shall have 10 days to elect in writing to do one of the following:

- (i) Abandon the hub agreement.
- (ii) Accept the alternate proposal submitted by the horsemen's organization.
- (iii) Proceed with a hub agreement arbitration.

(E) If only the party referenced in clause (ii) of subparagraph (B) is a signatory to the hub agreement, then the signatories to the hub agreement shall, within five days of execution of the hub agreement, provide written notice of the host and hub fees applicable pursuant to the hub agreement for each race conducted outside of California on which California residents may place advance deposit wagers, which notice shall be provided to all racing associations and fairs conducting live racing of the same breed covered by the hub agreement. If any racing association or fair wants to request a hub agreement arbitration, it shall send written notice of its election to the signatories to the hub agreement within 10 days after receipt of the notice of host and hub fees. It shall also provide its alternate proposal to the hub and host fees specified in the hub agreement with the notice of its election. If more than one racing association or fair provides notice of their request for hub agreement arbitration, those racing associations or fairs, or both, shall have a period of five days to jointly agree upon which of their alternate proposals shall be the official proposal for purposes of the hub agreement arbitration. If one or more racing associations or fairs that together conduct no fewer than five weeks of live racing on the breed on which wagering is conducted during the calendar year during which the wager is placed does not provide written notice of their election to arbitrate within the 10-day period, then no party shall have the right to request a hub agreement arbitration. If a valid hub agreement arbitration request is made, then the ADW provider shall have 10 days to elect in writing to do one of the following:

- (i) Abandon the hub agreement.
- (ii) Accept the alternate proposal submitted by the racing associations or fairs.
- (iii) Proceed with a hub agreement arbitration.

The results of any hub agreement arbitration elected pursuant to this subdivision shall be binding on all other associations and fairs conducting live racing on that breed.

(F) The acceptance thereof is in compliance with the provisions of the Interstate Horseracing Act (15 U.S.C. Sec. 3001 et seq.), regardless of the location of the ADW provider, whether in California or otherwise, including, without limitation, any and all requirements contained therein with respect to written consents and required written agreements of horsemen's groups to the terms and conditions of the acceptance of the wagers and any

arrangements as to the exclusivity between the host racing association or fair and the ADW provider.

(c) An advance deposit wager may be made only by the ADW provider holding the account pursuant to wagering instructions issued by the owner of the funds communicated by telephone call or through other electronic media. The ADW provider shall ensure the identification of the account's owner by using methods and technologies approved by the board. Any ADW provider that accepts wagering instructions concerning races conducted in California, or accepts wagering instructions originating in California, shall provide a full accounting and verification of the source of the wagers thereby made, including the postal ZIP Code and breed of the source of the wagers, in the form of a daily download of parimutuel data to a database designated by the board. The daily download shall be delivered in a timely basis using file formats specified by the database designated by the board, and shall include any and all data necessary to calculate and distribute moneys according to the rules and regulations governing California parimutuel wagering. Any and all reasonable costs associated with the creation, provision, and transfer of this data shall be borne by the ADW provider.

(d) (1) (A) The board shall develop and adopt rules to license and regulate all phases of operation of advance deposit wagering for ADW providers operating in California, including advance deposit wagering activity that takes place within a minisatellite wagering facility. The board may recover any costs associated with the licensing or regulation of advance deposit wagering activities in a minisatellite wagering facility either directly from the ADW provider or through an appropriate increase in the funding formula devised by the board pursuant to paragraph (1) of subdivision (a) of Section 19616.51.

(B) The board shall not approve an application for an original or renewal license as an ADW provider unless the entity, if requested in writing by a bona fide labor organization no later than 90 days before licensing, has entered into a contractual agreement with that labor organization that provides all of the following:

(i) The labor organization has historically represented employees who accept or process any form of wagering at the nearest horse racing meeting located in California.

(ii) The agreement establishes the method by which the ADW provider will agree to recognize and bargain in good faith with a labor organization that has demonstrated majority status by submitting authorization cards signed by those employees who accept or process any form of wagering for which a California ADW license is required.

(iii) The agreement requires the ADW provider to maintain its neutrality concerning the choice of those employees who accept or process any form of wagering for which a California ADW license is required whether or not to authorize the labor organization to represent them with regard to wages, hours, and other terms and conditions of employment.

(iv) The agreement applies to those classifications of employees who accept or process wagers for which a California ADW license is required whether the facility is located within or outside of California.

(C) (i) The agreement required by subparagraph (B) shall not be conditioned by either party upon the other party agreeing to matters outside the requirements of subparagraph (B).

(ii) The requirement in subparagraph (B) shall not apply to an ADW provider that has entered into a collective bargaining agreement with a bona fide labor organization that is the exclusive bargaining representative of employees who accept or process parimutuel wagers on races for which an ADW license is required whether the facility is located within or outside of California.

(D) Permanent state or county employees and nonprofit organizations that have historically performed certain services at county, state, or district fairs may continue to provide those services.

(E) Parimutuel clerks employed by racing associations or fairs or employees of ADW providers who accept or process any form of wagers who are laid off due to lack of work shall have preferential hiring rights for new positions with their employer in occupations whose duties include accepting or processing any form of wagers, or the operation, repair, service, or maintenance of equipment that accepts or processes any form of wagering at a racetrack, satellite wagering facility, or ADW provider licensed by the board. The preferential hiring rights established by this subdivision shall be conditioned upon the employee meeting the minimum qualification requirements of the new job.

(2) The board shall develop and adopt rules and regulations requiring ADW providers to establish security access policies and safeguards, including, but not limited to, the following:

(A) The ADW provider shall use board-approved methods to perform location and age verification confirmation with respect to persons establishing an advance deposit wagering account.

(B) The ADW provider shall use personal identification numbers (PINs) or other technologies to assure that only the accountholder has access to the advance deposit wagering account.

(C) The ADW provider shall provide for withdrawals from the wagering account only by means of a check made payable to the accountholder and sent to the address of the accountholder or by means of an electronic transfer to an account held by the verified accountholder or the accountholder may withdraw funds from the wagering account at a facility approved by the board by presenting verifiable account identification information.

(D) The ADW provider shall allow the board access to its premises to visit, investigate, audit, and place expert accountants and other persons it deems necessary for the purpose of ensuring that its rules and regulations concerning credit authorization, account access, and other security provisions are strictly complied with. To ensure that the amounts retained from the parimutuel handle are distributed under law, rules, or agreements, any ADW provider that accepts wagering instructions concerning races conducted in

California or accepts wagering instructions originating in California shall provide an independent “agreed-upon procedures” audit for each California racing meeting, within 60 days of the conclusion of the race meeting. The auditing firm to be used and the content and scope of the audit, including host fee obligations, shall be set forth in the applicable agreement. The ADW provider shall provide the board, horsemen’s organizations, and the host racing association with an annual parimutuel audit of the financial transactions of the ADW provider with respect to wagers authorized pursuant to this section, prepared in accordance with generally accepted auditing standards and the requirements of the board. Any and all reasonable costs associated with those audits shall be borne by the ADW provider.

(3) The board shall prohibit advance deposit wagering advertising that it determines to be deceptive to the public. The board shall also require, by regulation, that every form of advertising contain a statement that minors are not allowed to open or have access to advance deposit wagering accounts.

(e) In order for a licensee, betting system, or multijurisdictional wagering hub to be approved by the board as an ADW provider, it shall meet both of the following requirements:

(1) All wagers thereby made shall be included in the appropriate parimutuel pool under a contractual agreement with the applicable host track.

(2) The amounts deducted from advance deposit wagers shall be in accordance with the provisions of this chapter.

(f) After the payment of contractual compensation, the amounts received as market access fees from advance deposit wagers, which shall not be considered for purposes of Section 19616.51, shall be distributed as follows:

(1) An amount equal to 0.0011 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the Center for Equine Health to establish the Kenneth L. Maddy Fund for the benefit of the School of Veterinary Medicine at the University of California at Davis.

(2) An amount equal to 0.0003 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting shall be distributed to the Public Employment Relations Board to cover costs associated with audits conducted pursuant to Section 19526 and for purposes of reimbursing the State Mediation and Conciliation Service for costs incurred pursuant to this section. However, if that amount would exceed the costs of the Public Employment Relations Board, the amount distributed to that board shall be reduced, and that reduction shall be forwarded to an organization designated by the racing association or fair described in subdivision (a) for the purpose of augmenting a compulsive gambling prevention program specifically addressing that problem.

(3) An amount equal to 0.00165 multiplied by the amount handled on advance deposit wagers that originate in California for each racing meeting shall be distributed as follows:

(A) One-half of the amount shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established

pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) One-half of the amount shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(4) With respect to wagers on each breed of racing that originate in California, an amount equal to 2 percent of the first two hundred fifty million dollars (\$250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to 1.5 percent of the next two hundred fifty million dollars (\$250,000,000) of handle from all advance deposit wagers originating from within California annually, an amount equal to 1 percent of the next two hundred fifty million dollars (\$250,000,000) of handle from all advance deposit wagers originating from within California annually, and an amount equal to 0.50 percent of handle from all advance deposit wagers originating from within California in excess of seven hundred fifty million dollars (\$750,000,000) annually, shall be distributed as satellite wagering commissions. Satellite wagering facilities that were not operational in 2001, other than one each in the Cities of Inglewood and San Mateo, and two additional facilities each operated by the Alameda County Fair and the Los Angeles County Fair and their partners and other than existing facilities that are relocated, are not eligible for satellite wagering commission distributions under this section. The satellite wagering facility commissions calculated in accordance with this subdivision shall be distributed to each satellite wagering facility and racing association or fair in the zone in which the wager originated in the same relative proportions that the satellite wagering facility or the racing association or fair generated satellite commissions during the previous calendar year. If there is a reduction in the satellite wagering commissions pursuant to this section, the benefits therefrom shall be distributed equitably as purses and commissions to all associations and racing fairs generating advance deposit wagers in proportion to the handle generated by those associations and racing fairs. If a satellite wagering facility is permanently closed other than for renovation or remodeling, or if a satellite wagering facility is unwilling or unable to accept all of the signals that are available to that facility, the commissions otherwise provided for in this subdivision that would be payable to that facility shall be proportionately reduced to take into account the time that satellite wagering is no longer conducted by that facility, or the payment of those commissions shall be eliminated entirely if the facility is permanently closed, and, in either case, the satellite wagering commissions not paid shall be proportionately redistributed to the other eligible satellite wagering facilities. For purposes of this section, the purse funds distributed pursuant to Section 19605.72 shall be considered to be satellite wagering facility commissions attributable to thoroughbred races at the locations described in that section.

(5) After the distribution of the amounts set forth in paragraphs (1) to (4), inclusive, the remaining market access fees from advance deposit wagers originating in California shall be as follows:

(A) With respect to wagers on each breed of racing, the amount remaining shall be distributed to the racing association or fair that is conducting live racing on that breed during the calendar period in the zone in which the wager originated. That amount shall be allocated to that racing association or fair as commissions, to horsemen participating in that racing meeting in the form of purses, and as incentive awards, in the same relative proportion as they were generated or earned during the prior calendar year at that racing association or fair on races conducted or imported by that racing association or fair after making all deductions required by applicable law. Notwithstanding any other law, the distributions with respect to each breed of racing set forth in this subparagraph may be altered upon the approval of the board, in accordance with an agreement signed by the respective associations, fairs, horsemen's organizations, and breeders organizations receiving those distributions.

(B) If the provisions of Section 19601.2 apply, then the amount distributed to the applicable racing associations or fairs shall first be divided between those racing associations or fairs in direct proportion to the total amount wagered in the applicable zone on the live races conducted by the respective association or fair. Notwithstanding this requirement, when the provisions of subdivision (b) of Section 19607.5 apply to the 2nd District Agricultural Association in Stockton or the California Exposition and State Fair in Sacramento, then the total amount distributed to the applicable racing associations or fairs shall first be divided equally, with 50 percent distributed to applicable fairs and 50 percent distributed to applicable associations.

(C) Notwithstanding any provisions of this section to the contrary, with respect to wagers on out-of-state and out-of-country thoroughbred races conducted after 6 p.m., Pacific time, 50 percent of the amount remaining shall be distributed as commissions to thoroughbred associations and racing fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subparagraph (A), and the remaining 50 percent, together with the total amount remaining from advance deposit wagering originating from California out-of-state and out-of-country harness and quarter horse races conducted after 6 p.m., Pacific time, shall be distributed as commissions on a pro rata basis to the applicable licensed quarter horse association and the applicable licensed harness association, based upon the amount handled in state, both on- and off-track, on each breed's own live races in the previous year by that association, or its predecessor association. One-half of the amount thereby received by each association shall be retained by that association as a commission, and the other half of the money received shall be distributed as purses to the horsemen participating in its current or next scheduled licensed racing meeting.

(D) Notwithstanding any provisions of this section to the contrary, with respect to wagers on out-of-state and out-of-country nonthoroughbred races conducted before 6 p.m., Pacific time, 50 percent of the amount remaining

shall be distributed as commissions as provided in subparagraph (C) for licensed quarter horse and harness associations, and the remaining 50 percent shall be distributed as commissions to the applicable thoroughbred associations or fairs, as thoroughbred and fair purses, and as incentive awards in accordance with subparagraph (A).

(E) Notwithstanding any provision of this section to the contrary, the distribution of market access fees pursuant to this subparagraph may be altered upon the approval of the board, in accordance with an agreement signed by all parties whose distributions would be affected.

(g) A racing association, a fair, a satellite wagering facility, or a minisatellite wagering facility may enter into an agreement with an ADW provider to accept and facilitate the placement of any wager from a patron at its facility that a California resident could make through that ADW provider. Deductions from wagers made pursuant to the agreement shall be distributed in accordance with the provisions of this chapter governing wagers placed at that facility, except that the board may authorize alternative distributions as agreed to by the ADW provider, the operator of the facility accepting the wager, the association or fair conducting that breed of racing in the zone where the wager is placed, and the respective horsemen's organization.

(h) Any issues concerning the interpretation or application of this section shall be resolved by the board.

(i) Amounts distributed under this section shall be proportionally reduced by an amount equal to 0.00295 multiplied by the amount handled on advance deposit wagers originating in California for each racing meeting, except for harness racing meetings, provided that the amount of this reduction shall not exceed two million dollars (\$2,000,000). The method used to calculate the reduction in proportionate share shall be approved by the board. The amount deducted shall be distributed as follows:

(1) Fifty percent of the money to the board to establish and to administer jointly with the organization certified as the majority representative of California-licensed jockeys pursuant to Section 19612.9, a defined contribution retirement plan for California-licensed jockeys who retired from racing on or after January 1, 2009.

(2) The remaining 50 percent of the money shall be distributed as follows:

(A) Seventy percent shall be distributed to supplement the trainer-administered pension plans for backstretch personnel established pursuant to Section 19613. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19613 or any other provision of law.

(B) Thirty percent shall be distributed to the welfare fund established for the benefit of horsemen and backstretch personnel pursuant to subdivision (b) of Section 19641. Moneys distributed pursuant to this subparagraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(j) Amounts distributed under this section shall be proportionally reduced by an amount equal to 0.00295 multiplied by the amount handled on advance

deposit wagers originating in California for each harness racing meeting, provided that the amount of this reduction shall not exceed five hundred thousand dollars (\$500,000). The method used to calculate the reduction in proportionate share shall be approved by the board. The amount deducted shall be distributed as follows:

(1) First to the welfare fund established for the benefit of horsemen and backstretch personnel, pursuant to subdivision (b) of Section 19641, and administered by the organization representing the horsemen participating in the race meeting, in the amount requested by the welfare fund. Moneys distributed pursuant to this paragraph shall supplement, and not supplant, moneys distributed to that fund pursuant to Section 19641 or any other provision of law.

(2) The amount remaining, if any, shall be utilized for the benefit of the horsemen as specified in a written agreement between the racing association that conducts the live harness race meeting and the organization representing the horsemen participating in the race meeting.

(k) Notwithstanding subdivision (j), amounts generated that were deducted from amounts handled on advance deposit wagering for harness racing meetings pursuant to subdivision (i), as that section read before the enactment of subdivision (j), that have been held in trust by the California Exposition and State Fair shall be distributed as follows:

(1) Fifty percent to the harness racing horsemen who participated in the racing meeting that concluded June 16, 2012, in the form of purses.

(2) Fifty percent to the California Exposition and State Fair in the form of commissions.

SEC. 2. Section 19604.5 of the Business and Professions Code is amended to read:

19604.5. (a) As used in this section, the following definitions apply:

(1) “Back” means to wager on a selected outcome occurring in a given market.

(2) “Board” means the California Horse Racing Board.

(3) “Corrective wager” means an exchange wager placed by the exchange wagering licensee in a given market, under circumstances approved by the board, in order to address the impact on that market of the cancellation or voiding of a given matched wager or a given part of a matched wager.

(4) “Exchange” means a system operated by an exchange wagering licensee in which the exchange wagering licensee maintains one or more markets in which persons may back or lay a selected outcome.

(5) “Exchange revenues” means all charges, fees, income, payments, revenues, and deductions of any kind assessed or collected by, or paid or delivered to, an exchange wagering licensee in connection with the submission of any exchange wagers to the exchange wagering licensee by residents of California and residents of jurisdictions outside of California on the results of horse races conducted in California, and by residents of California on the results of horse races conducted outside of California.

(6) “Exchange wagers” means wagers submitted to an exchange wagering licensee to be posted in a market on an exchange.

(7) “Exchange wagering” means a form of parimutuel wagering in which two or more persons place identically opposing wagers in a given market.

(8) “Exchange wagering account” means the account established with an exchange wagering licensee by a person participating in exchange wagering. An exchange wagering account may only be established or maintained with an exchange wagering licensee by a natural person.

(9) “Exchange wagering agreement” means a written agreement by and among the applicable exchange wagering licensee, the applicable racing association or racing fair conducting live racing in this state, and the horsemen’s organization responsible for negotiating purse agreements for the breed on which exchange wagers are accepted, provided that the terms and conditions for the permitted use of the signal by the exchange wagering licensee, and the compensation to the applicable racing association or racing fair and the horsemen’s organization, include provisions for, but are not limited to, all of the following:

(A) Calculation of any and all amounts earned and payable to the applicable racing association or racing fair and horsemen’s organization.

(B) Audit rights and conditions.

(C) Duration terms.

(D) Contractual remedies.

(10) “Exchange wagering licensee” means a person located within or outside of California that is authorized to offer exchange wagering to residents of California pursuant to this section.

(11) “Identically opposing wagers” means wagers in which one or more persons offer to lay a selected outcome at the same price at which one or more persons offer to back that same outcome, with the amount subject to the lay being proportionately commensurate to the amount subject to the back.

(12) “Lay” means to wager on a selected outcome not occurring in a given market.

(13) “Market” means, in relation to a given horse race or a given set of horse races, a particular outcome that is subject to exchange wagering as determined by an exchange wagering licensee.

(14) “Matched wager” means the wager that is formed when two or more persons are confirmed by the exchange operator as having placed identically opposing wagers in a given market on the exchange.

(15) “Net winnings” means the aggregate amounts payable to a person as a result of that person’s winning matched wagers in a pool less the aggregate amount paid by that person as a result of that person’s losing matched wagers in that pool.

(16) “Parimutuel” means any system whereby wagers with respect to the outcome of a horse race are placed with, or in, a wagering pool conducted by an authorized person, and in which the participants are wagering with each other and not against the person conducting the wagering pool.

(17) “Person” means any individual, partnership, corporation, limited liability company, or other association or organization.

(18) “Pool” means the total of all matched wagers in a given market.

(19) “Price” means the odds for a given exchange wager.

(20) “Unmatched wager” means a wager or portion of a wager placed in a given market within an exchange that does not become part of a matched wager because there are not one or more available exchange wagers in that market with which to form one or more identically opposing wagers.

(21) “Zone” has the same meaning as defined in Section 19530.5, as modified by subdivision (f) of Section 19601, except that for purposes of this section the combined central and southern zones shall be considered one “central/southern” zone.

(b) Notwithstanding any other law, rule, or regulation, exchange wagering by residents of California and residents of jurisdictions outside of California on the results of horse races conducted in California, and by residents of California on the results of horse races conducted outside of California, shall be lawful provided that all of the following apply:

(1) Exchange wagering shall only be conducted by an exchange wagering licensee pursuant to a valid exchange wagering license issued by the board.

(2) No exchange wagering licensee shall accept exchange wagers on races conducted in California from a resident of California or a resident of a jurisdiction outside California, or conducted outside California from a resident of California, unless an exchange wagering agreement exists allowing these wagers.

(3) Exchange wagering shall be conducted pursuant to and in compliance with the provisions of the Interstate Horseracing Act of 1978 (15 U.S.C. Sec. 3001 et seq.), as amended, this section, all applicable federal laws, and rules and regulations promulgated by the board pursuant to this section.

(4) An exchange wagering licensee may only offer exchange wagering on thoroughbred horse races, whether these thoroughbred races are conducted within or outside of this state, to persons whose primary residence address is in the northern zone of this state if it has an exchange wagering agreement with (A) the racing association or racing fair located in the northern zone authorized by the board to conduct a live thoroughbred racing meeting in accordance with the provisions of Article 4 (commencing with Section 19480) at that time, or during the calendar period, when the exchange wagering licensee is offering exchange wagering to persons whose primary residence is in the northern zone of this state, and (B) the horsemen’s organization responsible for negotiating purse agreements for a live thoroughbred racing meeting.

(5) An exchange wagering licensee may only offer exchange wagering on thoroughbred horse races, whether these thoroughbred races are conducted within or outside of this state, to persons whose primary residence address is in the central/southern zone of this state if it has an exchange wagering agreement with (A) the racing association or racing fair located in the central/southern zone authorized by the board to conduct a live thoroughbred racing meeting in accordance with the provisions of Article 4 (commencing with Section 19480) at that time, or during the calendar period, when the exchange wagering licensee is offering exchange wagering to persons whose primary residence is in the central/southern zone of this state, and (B) the

horsemen's organization responsible for negotiating purse agreements for a live thoroughbred racing meeting.

(6) An exchange wagering licensee may only offer exchange wagering on quarter horse races, whether these quarter horse races are conducted within or outside of this state, to persons whose primary residence address is in this state if it has an exchange wagering agreement with (A) the racing association or racing fair located in the state authorized by the board to conduct a live quarter horse racing meeting in accordance with the provisions of Article 4 (commencing with Section 19480) at that time, or during the calendar period, when the exchange wagering licensee is offering exchange wagering to persons whose primary residence is this state, and (B) the horsemen's organization responsible for negotiating purse agreements for the live quarter horse racing meeting.

(7) An exchange wagering licensee may only offer exchange wagering on standardbred horse races, whether these standardbred horse races are conducted within or outside of this state, to persons whose primary residence address is in this state if it has an exchange wagering agreement with (A) the racing association or racing fair located in the state authorized by the board to conduct a live standardbred racing meeting in accordance with the provisions of Article 4 (commencing with Section 19480) at that time, or during the calendar period, when the exchange wagering licensee is offering exchange wagering to persons whose primary residence is this state, and (B) the horsemen's organization responsible for negotiating purse agreements for the live standardbred racing meeting.

(8) Exchange wagers are submitted to, and accepted by, an exchange wagering licensee in person, by direct telephone call, or by communication through other electronic media.

(c) A person shall not be permitted to open an exchange wagering account, or place an exchange wager, except in accordance with federal law, this section, and rules and regulations promulgated by the board. Only natural persons with valid exchange wagering accounts may place wagers through an exchange. To establish an exchange wagering account, a person shall be at least 18 years of age and a resident of California or of another jurisdiction within which the placement of exchange wagers would not be unlawful under United States federal law or the law of that jurisdiction.

(d) The board shall approve, as part of the exchange wagering licensee's application for an exchange wagering license, security policies and safeguards to ensure player protection and integrity, including, but not limited to, provisions governing the acceptance of electronic applications for persons establishing exchange wagering accounts, location and age verification confirmation for persons establishing exchange wagering accounts, the use of identifying factors to ensure security of individual accounts, and the requirements for management of funds in exchange wagering accounts. An exchange wagering licensee may not accept a wager, or series of wagers, if the results of the wager or wagers would create a liability for the exchange wagering account holder that is in excess of the funds on deposit in the exchange wagering account of that holder.

(e) Notwithstanding any other law, rule, or regulation:

(1) The board shall have full power to prescribe rules, regulations, and conditions under which exchange wagering may be conducted in California consistent with this section, including the manner in which exchange wagers may be accepted and the requirements for any person to participate in exchange wagering.

(2) Before promulgating rules, regulations, and conditions under which exchange wagering may be conducted in California, the board shall consider studies or comments submitted by interested parties on the impact of exchange wagering on parimutuel betting and the economics of the California horse racing industry to assist the board in developing rules, regulations, and conditions for exchange wagering that are in the best interest of the public and the California horse racing industry. The board may set a timeframe for comments and studies to be submitted by interested parties and for the board to consider the studies and comments so as to allow sufficient time, in the discretion of the board, to allow for the promulgation of rules, regulations, and conditions for exchange wagering and the issuance of licenses for exchange wagering before May 1, 2012.

(3) Notwithstanding paragraph (1), the board shall adopt the following rules:

(A) An owner, authorized agent, trainer, jockey, jockey's agent, driver, or stable employee shall not place an exchange wager to lay any entrant in a horse race that is owned in whole or part by that owner or the owner represented by that authorized agent, trained by that trainer or stable employee, ridden by that jockey or the jockey represented by that jockey's agent, or driven by that driver.

(B) No exchange wagers shall be placed on a market after the conclusion of a live race. Exchange wagering on previously run races is prohibited.

(C) The exchange wagering licensee shall provide a person with information on the race, including the track where the race will take place and the names of the participating horses, before the person may place an exchange wager.

(D) The exchange wagering licensee shall require the person making the exchange wager to select the specific race and horse for the wager. The use of automatic, quick-pick, or similar features to aid in the placing of a wager shall be prohibited.

(E) The results of a wager shall not be displayed through the use of video or mechanical reels or other slot machine or casino game themes, including, but not limited to, dice games, wheel games, card games, and lotto.

(4) The board shall have full power to prescribe rules, regulations, and conditions under which all exchange wagering licenses are issued or renewed in California, including requiring an annual audit of the exchange wagering licensee's books and records pertaining to exchange wagering, and to revoke, suspend, or refuse to renew a license pursuant to the authority granted to the board in this chapter.

(5) The board may reasonably require licensure or registration of officers or directors of any exchange wagering licensee.

(6) The board may recover any costs associated with the licensing or regulation of exchange wagering from the exchange wagering licensee by imposing an assessment on the exchange wagering licensee in an amount that does not exceed the reasonable costs associated with the licensing or regulation of exchange wagering. Funds received pursuant to this subdivision shall be deposited in the Horse Racing Fund, to be available upon appropriation by the Legislature for the sole purpose of regulating exchange wagering.

(f) (1) The board shall not approve an application for an original or renewal license as an exchange wagering licensee unless the entity, if requested in writing by a bona fide labor organization no later than 90 days before licensing, has entered into a contractual agreement with that labor organization that provides all of the following:

(A) The labor organization has historically represented employees who accept or process any form of wagering at the nearest horse racing meeting located in California.

(B) The agreement establishes the method by which the exchange wagering licensee will agree to recognize and bargain in good faith with a labor organization that has demonstrated majority status by submitting authorization cards signed by those employees who accept or process any form of wagering for which a California exchange wagering license is required.

(C) The agreement requires the exchange wagering licensee to maintain its neutrality concerning the choice of those employees who accept or process any form of wagering for which a California exchange wagering license is required and whether or not to authorize the labor organization to represent them with regard to wages, hours, and other terms and conditions of employment.

(D) The agreement applies to those classifications of employees who accept or process wagers for which a California exchange wagering license is required, whether the facility is located within or outside of California.

(2) (A) The agreement required by paragraph (1) shall not be conditioned by either party upon the other party agreeing to matters outside the requirements of paragraph (1).

(B) The requirement in paragraph (1) shall not apply to an exchange wagering licensee that has entered into a collective bargaining agreement with a bona fide labor organization that is the exclusive bargaining representative of employees who accept or process parimutuel wagers on races for which an exchange wagering license is required, whether the facility is located within or outside of California.

(3) Permanent state or county employees and nonprofit organizations that have historically performed certain services at county, state, or district fairs may continue to provide those services.

(4) Parimutuel clerks employed by racing associations or fairs or employees of exchange wagering licensees who accept or process any form of wagers who are laid off due to lack of work shall have preferential hiring rights for new positions with their employer in occupations whose duties

include accepting or processing any form of wagers, or the operation, repair, service, or maintenance of equipment that accepts or processes any form of wagering at a racetrack, satellite wagering facility, or exchange wagering licensee licensed by the board. The preferential hiring rights established by this paragraph shall be conditioned upon the employee meeting the minimum qualification requirements of the new job.

(g) Notwithstanding any other law, rule, or regulation, an exchange wagering licensee shall not be required to include any pools of exchange wagers in the wagering pools at the racing association or racing fair conducting the races, nor shall an exchange wagering licensee be required to retain, withhold, or take out any amounts from any exchange wagers, except as expressly set forth in the applicable exchange wagering agreement.

(h) Subject to the approval of the board, an exchange wagering licensee shall be permitted to collect exchange revenues in the manner and amounts determined by the exchange wagering licensee, including, but not limited to, assessing a surcharge on any person's net winnings.

(i) Notwithstanding any other law, rule, or regulation, the board shall require all of the following:

(1) Each exchange wagering licensee shall distribute all moneys in each pool, net of any fees, charges, or deductions of any kind assessed or collected by the exchange wagering licensee in connection with matched wagers in that pool, at the conclusion of the race or races associated with that pool.

(2) Each exchange wagering licensee shall distribute the portions of the exchange wagering licensee's exchange revenues as may be required pursuant to the exchange wagering agreement pursuant to paragraphs (2) to (7), inclusive, of subdivision (b).

(3) Fifty percent of the amounts received by a racing association or racing fair from exchange wagering shall be paid to horsemen participating in the meetings conducted by that racing association or racing fair in the form of purses. The allocation of amounts received by a racing association or racing fair from exchange wagering between that racing association or racing fair and the horsemen participating in the meetings conducted by that racing association or racing fair may be modified by a written agreement between those entities.

(4) In addition to payments set forth in paragraphs (1) and (2), each exchange wagering licensee shall distribute, on an annual basis, for the purposes specified in Section 19612.9, an amount equal to the greater of (A) one hundred thousand dollars (\$100,000), or (B) an amount equal to 0.001 multiplied by the total amount of exchange revenues collected by the exchange wagering licensee in that calendar year. The distribution shall be made at the direction of the board pursuant to Section 19612.9. This paragraph shall become inoperative on January 1 immediately following the year in which the 10th annual distribution of funds is made pursuant to Section 19612.9, and, as of that date, is repealed.

(j) An exchange wagering licensee may cancel or allow to be canceled any unmatched wagers, without cause, at any time.

(k) The board may prescribe rules governing when an exchange wagering licensee may cancel or void a matched wager or part of a matched wager, and the actions that an exchange wagering licensee may take when all or part of a matched wager is canceled or voided. The rules may include, but are not limited to, permitting the exchange wagering licensee to place corrective wagers under circumstances approved in the rules adopted by the board. Exchange wagers placed on a market after the start of a race shall be lawful if authorized by the board, racing association, or racing fair conducting the races, and the horsemen's organization responsible for negotiating purse agreements for the breed on which the exchange wager is made.

(l) The provisions of this section shall be deemed to be severable, and if any phrase, clause, sentence, or provision of this section is declared to be unconstitutional or the applicability thereof to any person is held invalid, the remainder of this section shall not thereby be deemed to be unconstitutional or invalid.

(m) The board shall promulgate administrative rules and regulations to effectuate the purposes of this section.

(n) No exchange wagering licensee may accept exchange wagers pursuant to this section before May 1, 2012.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.